

Message Text

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PAGE 01 STATE 160822

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SPECIAL CHARGE: OPIC

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FM SECSTATE WASHDC

TO AMEMBASSY NAIROBI

INFO AMEMBASSY ROME

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E.O. 11652: N/A

TAGS: EIND, KE

SUBJECT: ATWELL DEVELOPMENT COMPANY

REF: (A) NAIROBI 6104; (B) STATE 147744

1. OPIC CONCERNED AT CENTRAL BANK'S DELAY IN PERMITTING TRANSFER OF ATWELL'S KENYAN SHILLINGS TO OPIC'S ACCOUNT AND BELIEVES THAT CENTRAL BANK OFFICIALS MAY NOT BE FOCUSING ON MOST RELEVANT ISSUES. OPIC INCONVERTIBILITY CLAIMS SHOULD BE DEALT WITH IN ROUTINE MANNER AS BILATERAL AGREEMENT (REFTEL B, PARAGRAPH 1C) CONTEMPLATES. HOWEVER, TRANSFER OF LOCAL CURRENCY IS NECESSARY FOR OPIC TO PROCESS CLAIM.

2. FAILURE OF GOK AUTHORITIES TO ALLOW TRANSFER OF THIS RELATIVELY SMALL AMOUNT OF LOCAL CURRENCY TO OPIC COULD CHANGE THE ENTIRE NATURE OF THE CLAIM SINCE IT WOULD THEN BE POSSIBLE FOR ATWELL TO MAKE A CLAIM THAT EXPROPRIATORY ACTION HAD BEEN TAKEN BY THE GOK WITH RESPECT TO SUCH LOCAL CURRENCY.

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3. SECTION 1.15 OF CONTRACT OF GUARANTY NO. 5715 AS AMENDED DEFINES EXPROPRIATORY ACTION AS: "ANY ACTION WHICH IS TAKEN, AUTHORIZED, RATIFIED OR CONDONED BY THE GOVERNMENT OF THE PROJECT COUNTRY,...., AND WHICH FOR A PERIOD OF ONE YEAR DIRECTLY RESULTS IN PREVENTING: ... (E) THE INVESTOR FROM WITHDRAWING FROM THE PROJECT COUNTRY AMOUNTS RECEIVED IN RESPECT OF THE INVESTMENT AS INVESTMENT EARNINGS OR RETURN OF CAPITAL, WHICH ACTION COMMENCED WITHIN THE EIGHTEEN (18) MONTHS IMMEDIATELY SUCCEEDING SUCH RECEIPT;...".

4. OPIC WISHES TO PROCESS ATWELL'S CLAIM AS PROMPTLY AS POSSIBLE. THEREFORE, OPIC WOULD APPRECIATE EMBASSY DISCUSSING THIS MATTER WITH APPROPRIATE GOK OFFICIALS TO LEARN FULL REASON FOR REFUSAL IN PERMITTING TRANSFER. EMBASSY MAY WISH TO POINT OUT TO SUCH OFFICIALS THAT IT APPEARS UNNECESSARY TO COMPLICATE THIS RELATIVELY SMALL AND ROUTINE MATTER BY REFUSING TO PERMIT THE TRANSFER OF APPROXIMATELY 404,312 KENYAN SHILLINGS TO THE EMBASSY FOR DEPOSIT IN OPIC'S ACCOUNT.

DECONTROL 7/24/75. KISSINGER

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